

## Hudson City Reporter

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### Timing is everything

#### *UC budget meeting apparently violated public meetings law*

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**The Union City Board of Commissioners held an important special meeting on May 13 at 6 p.m. to introduce their municipal budget for the year, but any taxpayer who might have been interested in attending would have arrived at 7 p.m. - only to find that the meeting had already ended.**

**Why would anyone arrive an hour late?**

**The answer is simple: the state-mandated public notices of the meeting, which must be sent out in accordance with the Open Public Meetings Act (OPMA), said the meeting would be held "Tuesday, May 13, 2008 at 7 p.m."**

**And yet, a copy of the agenda that was available at the meeting, which *The Union City Reporter* obtained afterward, is identical to the previously released version with one exception; the meeting is noted as being held at 6 p.m., which means that the actual time of the meeting differed from the previously announced time.**

This meeting was particularly important to the taxpayers, because the city was introducing its late \$93.7 million budget that covers spending from July 1, 2007 through this June, of which almost half (\$43.9 million) is funded by taxes.

According to the state Department of Law and Public Safety's OPMA legislation, municipalities are required to give "adequate notice," which is defined as "written advanced notice of at least 48 hours, giving the time, date, location, and to the extent known, the agenda of any regular, special or rescheduled meeting."

This allows the public the opportunity to attend meetings held by municipal bodies so that members of the community can know and have a say in the actions taken by their local government.

#### **Apparent violation of OPMA**

Every Union City Board of Commissioners Meeting Agenda contains the same opening statement:

"This meeting has been called in accordance Chapter 231, Public Law of 1975, the 'Open Public Meetings Act.' Adequate notice of this Meeting has been provided as follows: Notice of this meeting setting forth the time, date, location, and the agenda, to the extent known, was forwarded to THE JERSEY JOURNAL, THE RECORD, and THE HUDSON REPORTER, has been posted on the bulletin board in City Hall and has been made available to the public in the Office of the Municipal Clerk."

OPMA was established to hold governing public bodies accountable to members of the community.

Actions taken at any meeting violating OPMA may be voided within 45 days if a citizen challenges them in state Supreme Court as a violation of the act and its provisions.

In the past, actions taken at such meetings have been overturned due to technicalities, making it important for cities to provide the proper notice.

Hoboken Councilwoman Beth Mason has brought suits related to apparent OPMA violations against the city of Hoboken to champion open government. One example is the suit she brought against the Hoboken Board of Education when it tried to bar videotaping at open meetings.

The state Supreme Court ruled in Mason's favor, determining that the public has the right to videotape the meetings.

Mason noted that the process of bringing such suits is lengthy - the Board of Ed case took approximately two to three years to go through the system - but she firmly believes such cases are worth the effort.

"This is about accountability and having the public really see who is responsible and why," Mason said. "One of the biggest things is: How is the money being spent? It's not that organization's money, it's [the taxpayers'] money ... Transparency is the key to accountability, and without that - look, the public is the group that makes the decisions on who is going to get elected and why; elected officials are accountable."

Mason said that changing the time, especially to an earlier time, disregards that need for accountability.

She added that government having to answer to its citizens in such a way is "critical to our democracy, and it's a cornerstone of it, and it's sad when it is just ignored."

### **Communication breakdown**

When Union City Mayor Brian Stack was first informed that the information provided regarding the time of the meeting was inaccurate, he apologized. But last week, he did not return several follow-up phone calls to his office to find out how the mistake occurred.

Last week, Union City Commissioner of Public Affairs Lucio Fernandez said that the city clerk would be the one to ask why the public notice differed from the meeting time. "I don't know how the meetings get scheduled," he said.

Calls to the clerk's office were not returned last week.

Additionally, the *Jersey Journal* verified that they knew the announced time of the meeting to be 7 p.m.

When asked about the issue, Hudson County Prosecutor Edward DeFazio said, "Based on those facts, it's not a case that we would take up." He explained, "That's more of a technical violation; that may be due to oversight as opposed to an intentional violation of the OPMA."

DeFazio added that if there was a pattern of this type of conduct, then the county Prosecutor's Office would be interested, but someone would have to report the violation first and then the prosecutor would decide whether to investigate.

"It's a matter based on the fact that our primary function is to prosecute criminal cases - indictable cases," said DeFazio, adding, "My first thought is that the [state] Department of

Community Affairs may be a more appropriate agency to investigate the violation or the alleged violation."

According to DeFazio, the state Attorney General would take the case up if referred by the state Department of Community Affairs or the Prosecutor's Office. Furthermore, the prosecutor said he has no recollection of an OPMA violation being prosecuted in Hudson County.

Based on the current circumstances, he said that it wouldn't be appropriate for his office to investigate.

However, he added, "If it were to happen again, then of course we would be in a different posture."

Union City's municipal budget passed at a subsequent meeting at 4:30 p.m. on Friday, June 6 in City Hall, a time when many were unable to attend.

*Comments can be sent to [Mpaul@hudsonreporter.com](mailto:Mpaul@hudsonreporter.com).*